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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/349,806

07/08/1999

JOSEPH M. JACOBSON

INK-046

7162

21323

7590

11/20/2002

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EXAMINER

TALBOT, BRIAN K

ART UNIT

PAPER NUMBER

1762

DATE MAILED: 11/20/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/349,806

Applicant(s)

JACOBSON ET AL.

Examiner

Brian K Talbot

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 6-20, 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The amendment filed 9/25/02 has been considered and entered. Claims 1-25 remain in the application with claims 1-5 and 21-23 being active along with claims 6-20,24 and 25 being claims directed toward a non-elected invention.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. In light of the arguments filed 9/25/02, the references Comiskey et al. (6,177,921 B1) or Jacobson et al. (6,323,989 B1) have been withdrawn from the rejection.

Claim Rejections - 35 USC § 103

4. Claims 1-5 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson (5,208,686) or Ferguson (5,345,322).

Ferguson (5,208,686) or Ferguson (5,345,322) teach applying capsules with multiple colors as well as applying a first layer of one color followed by a second layer of a different color and if desired a third color. Each capsule with the different color can be responsive to a different voltage or frequency and would be in registration with a pair of electrodes. The first color being in registration with say the bottom electrode while the second color would be in registration with the top electrode. See figures 13-31 of Ferguson (5,208,686).

Ferguson (5,208,686) or Ferguson (5,345,322) fail to teach the preferred coating application, ink-jet, screen print, gravure coating, etc.

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It is the Examiner position that one skilled in the art at the time the invention was made would have had a reasonable expectation of achieving similar results regardless of the application utilized to coat the capsules. If Applicant disagrees, Applicant is invited to supply a showing of unexpected results regarding these various techniques. Applicant is reminded tthat the claims need to be commensurate in scope with this showing. The Examiner will reconsider his position in light of such a submission.

Response to Amendment

5. Applicant's arguments filed 9/25/02 have been fully considered but they are not persuasive.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K Talbot whose telephone number is (703) 305-3775. The examiner can normally be reached on Tuesday-Friday 6AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P Beck can be reached on (703) 308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-6078 for regular communications and (703) 872-9765 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3775.



Brian K Talbot
Primary Examiner
Art Unit 1762

BKT
November 19, 2002